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RICHARD C. WATTERS, ESQ. - 060162
AIDA S. MACEDO, ESQ. - 294632
LAW OFFICES OF
MILES, SEARS & EANNI
A PROFESSIONAL CORPORATION
2844 FRESNO STREET
P.O. BOX 1432
FRESNO, CALIFORNIA 93716
TELEPHONE (559) 486-5200
Attorneys for Plaintiffs

(SPACE BELOW FOR FILING STAMP ONLY)

IN THE UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION

In re	) NO. 17-13797
)
TULARE LOCAL HEALTHCARE	) Chapter 9
DISTRICT dba TULARE	) DCN: ASM-1
REGIONAL MEDICAL CENTER,)
	) REPLY TO OPPOSITION TO MOTION
	) FOR RELIEF FROM AUTOMATIC
Debtor.	) STAY BY THOMAS J. GRIESBACH;
	) AMY S. FERRERA; AND MATTHEW
	) J. GRIESBACH
)
Tax ID#: 94-6002897	) Date: November 30, 2017
Address: 869 N. Cherry Street	) Time: 9:30 a.m.
Tulare, CA 93274	) Place: 2500 Tulare St.
	) 5 th Flr.
	) Fresno, CA 93721
	) Ctrm: 13
	) Dept: B
	) Judge: Rene Lastreto II

Debtor Tulare Local Healthcare District dba Tulare Regional Medical Center ("TRMC") opposes Creditors Thomas J. Griesbach; Amy S. Ferrera; and Matthew J. Griesbach's Motion for Relief from Automatic Stay under 11. U.S.C. §362 on the grounds that TRMC is involved in a "struggle for control of its own finances with its

1 management company" and its membership in a Joint Powers Authority
2 insurance policy subjects TRMC to a \$100,000 deductible for any
3 award or settlement (Opposition at 4).

4 In re Kronemyer, 405 B.R. 915, 921 (B.A.P. 9th Cir. 2009) the
5 court held:

6 What constitutes "cause" for granting relief from the
7 automatic stay is decided on a case-by-case basis.
8 Christensen v. Tucson Estates, Inc. . . . Among factors
9 appropriate to consider in determining whether relief
10 from the automatic stay should be granted to allow state
11 court proceedings to continue are considerations of
12 judicial economy and the expertise of the state court,
13 see MacDonald v. MacDonald (In re MacDonald), 755 F.2d
14 715, 717 (9th Cir.1985), as well as prejudice to the
15 parties and whether exclusively bankruptcy issues are
16 involved, see Ozai v. Tabuena (In re Ozai), 34 B.R. 764,
17 766 (9th Cir.BAP1983). (Internal citations omitted).

18 Matter of McGraw, 18 B.R. 140, 141-42 (Bankr. W.D. Wis. 1982)
19 held:

20 Both the U. S. Congress and federal bankruptcy courts
21 have recognized that relief from the 11 U.S.C. s 362 stay
22 is permissible in some limited circumstances. Courts have
23 allowed tailoring of the 11 U.S.C. s 362 stay to permit
24 the continuance of a civil suit with a debtor where two
25 conditions were met. (Citations). These conditions are
26 that:

27 (a) No "great prejudice " to either the bankruptcy estate
28 or the debtor must result from the continuance of the
civil action, and

(b) the hardship to the plaintiff caused by the
continuance of the stay considerably outweighs the
hardship caused to the debtor by modification of the
stay.

29 In re Borbidge, 81 B.R. 332, 335 (Bankr. E.D. Pa. 1988) the
30 court held:

31 The easiest ground for determining that "cause" exists in
32 favor of an unsecured creditor is when the creditor seeks
33 to recover from nonestate property, **such as under an**
34 **insurance** or indemnity agreement. (Citations). However,
35 this is not the only ground by which an unsecured
36 creditor has obtained relief from the automatic stay. In
37 some instances, relief has been granted because the

1 matter in dispute would be resolved more economically,
2 conveniently, and quickly in a nonbankruptcy forum.
(Internal citations omitted; emphasis added.)

3 Here, movant creditor and plaintiffs in the underlying
4 personal injury cause of action have agreed to only seek insurance
5 policy proceeds. TRMC has failed to meet its burden of proof that
6 the stay from relief is unwarranted as it has not submitted any
7 policy declarations or proof that the \$100,000 deductible is
8 required nor that such policy was in place at the time of Mrs.
9 Griesbach's death. A Certificate of Participation in the BETA Risk
10 Management Authority insurance policy was produced in the
11 underlying personal injury case (attached hereto as **Exhibit "A"** to
12 Macedo Declaration) which was effective from July 1, 2016 to July
13 1, 2017 shows no deductible requirement under Item 6. Creditor-
14 plaintiffs' counsel has requested policy declarations from debtor's
15 counsel but has not received any proof of a \$100,000 deductible to
16 date. (Macedo Declaration.)

17 In its opposition TRMC contends that "BETA has indicated that
18 HCCA has not tendered TRMC's monthly contract payments for
19 September or October . . . and it will seek termination of TRMC's
20 membership and contribution on any claims such as Creditors.
21 (Opposition at 5). Creditor-plaintiffs' injury occurred on
22 September 16-17 of 2016 well within the time of the BETA policy
23 effective dates of July 1, 2016 to July 1, 2017. Plaintiffs in the
24 underlying case filed their claim on February 23, 2017 and our
25 Complaint on June 14, 2017. TRMC filed an Answer after a demurrer
26 on August 11, 2017. Therefore, the insurance policy was in place at
27 the time of Mrs. Griesbach's death.

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1 Further, TRMC concedes that courts have held that cause exists
2 to lift the stay where the debtor-defendant will not be prejudiced
3 because plaintiffs seek only to recover insurance proceeds. Here,
4 plaintiffs seek to only recover insurance proceeds and without
5 evidence that the \$100,000 payment is required to be paid by TRMC,
6 there is no prejudice to TRMC. Furthermore TRMC has been defended
7 in the underlying action by WEISS SALINAS LAW GROUP, INC. attorneys
8 located in Fresno. Presumably their attorney's fees are paid by the
9 BETA Insurance.

10 Lastly, creditor-plaintiffs hardship from being prevented to
11 litigate their personal injury case considerably outweighs the
12 hardship caused to the debtor if granted relief from the automatic
13 stay. Because of the complexity of the Bankruptcy proceedings and
14 dispute with its management company creditor-plaintiffs could be
15 waiting years before the resolution of their civil case. The civil
16 case will not prejudice TRMC as creditor has agreed to only seek
17 policy insurance funds. As such, the court should grant creditor-
18 plaintiffs relief from the automatic stay for cause.

19 DATED: November 21, 2017

20 MILES, SEARS & EANNI

21
22 By: 

23 AIDA S. MACEDO

24 Attorneys for Plaintiffs
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